

ORDINANCE NO.

AN ORDINANCE AMENDING CITY CODE CHAPTER 8-1, ARTICLE 7, AND CITY CODE CHAPTER 10-6 TO CLARIFY AUTHORITY, TERMINOLOGY, AND PENALTIES RELATED TO FIRE HAZARD ACTIVITY AND SMOKING ON PARKLAND; AND DECLARING AN EMERGENCY

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Chapter 8-1, Article 7 of Title 8 (Parks and Recreation) of the City Code is amended to read:

ARTICLE 7. RESTRICTIONS ON OUTDOOR [~~BURNING~~]/COOKING AND GRILLING.

§ 8-1-91 DEFINITIONS.

In this article:

(A) The term “BURN” or “BURNING” means the ignition of a Combustible Material which could create flames or sparks that could result in a fire. This includes, but is not limited to, welding, lighting campfires, use of equipment other than a propane-fueled grill or stove to grill or bar-b-que food, and use of any tool that could create a flame or spark.

(B) The term “COMBUSTIBLE MATERIAL” means any material that is capable of catching fire.

(C) The term “DIRECTOR” means the Director of the Parks and Recreation Department.

(D) The term “SMOKE” or “SMOKING” means lighting, inhaling, exhaling, burning, holding, carrying or discarding any lighted cigar, cigarette, pipe, weed, or plant.

§ 8-1-92 [~~Burn-Ban Order~~] Outdoor Cooking and Grilling Prohibition.

The city manager or the director may issue an [~~burn-ban order~~] outdoor cooking and grilling prohibition for City Parks and Nature Preserves when it is determined that weather conditions create a significant fire hazard or a wildfire danger. The city manager or the director shall determine when the [~~burn-ban~~] outdoor cooking and grilling prohibition ends.

§ 8-1-93 NOTICES.

(A) Notice of ~~[Order]~~ Prohibition. The director shall post notice of an ~~[burn ban order]~~ outdoor cooking and grilling prohibition on the city website, at public entrances, and in heavy traffic areas of each Park and Nature Preserve. In addition, the director shall issue a notice to local media.

(B) Notice of Termination of ~~[Order]~~ Prohibition. The director shall post notice of the termination of an ~~[burn ban order]~~ outdoor cooking and grilling prohibition on the city website. In addition, the director shall remove the notices of the ~~[burn ban orders]~~ outdoor cooking and grilling prohibition in Parks and Nature Preserves, and shall issue a notice to local media.

§ 8-1-94 OFFENSE.

(A) A person commits an offense if the person performs any of the following activities in a Park or Nature Preserve while a burn ban order or an outdoor cooking and grilling prohibition is in effect:

- (1) smokes.
- (2) burns a Combustible Material or engages in an activity which creates a flame or spark that could result in a fire.

(B) For purposes of (A)(ii) above, a person may not Burn a Combustible Material in a Park or Nature Preserve even if the material is contained within an enclosure which is intended to contain all flames or sparks.

(C) This ordinance does not apply to a person who Burns a Combustible Material if the Burn:

- (1) is conducted by a prescribed burn manager certified under Section 153.048, Texas Natural Resources Code, and meets the standards of Section 153.047, Texas Natural Resources Code;
- (2) is performed by city employees, city contractors, or utility employees in the performance of their official duties; or
- (3) involves actions taken by public safety employees in the performance of their official duties that are necessary to the delivery of those services.

§ 8-1-95 PENALTY.

(A) A person who violates this Article commits a criminal offense. An offense under this Article is punishable by a fine ~~[not less than \$300.00 and not to exceed \$500.00. A culpable mental state is not required for a violation of this Article, and need not be proved.]~~ upon conviction not to exceed \$500 unless proof of a culpable mental

state is pled, in which case the fine upon conviction shall not exceed \$2,000. Proof of a culpable mental state is expressly waived and need not be proved when a fine of \$500 or less is sought for the offense.

(B) Each act which violates a prohibition of this chapter and each omission which violates a duty imposed by this chapter is a separate offense chargeable as ~~[violation is]~~ a separate violation.

(C) This section is cumulative of other laws providing enforcement authority.

PART 2. City Code Chapter 10-6 (Smoking in Public Places), Section 10-6-3 is amended to read:

§ 10-6-3 EXEMPTIONS.

(A) This chapter does not apply to:

- (1) a dwelling unit, as defined in Section 25-1-21(35) (*Definitions*), that is used exclusively for a residential use, as defined in Section 25-2-3 (*Residential Uses Described*);
- (2) a hotel or motel room designated as a smoking room and rented to a person, provided that the hotel or motel complies with Section 10-6-4 (*Designation of Smoking Rooms by Hotel and Motel Restricted*) provided, however, that this exemption does not apply to a park, public recreation area, or recreation facility;
- (3) a retail store;
- (4) a private or semi-private room in a nursing home or long-term care facility that is occupied by individuals who smoke and have requested in writing to be placed in a room where smoking is permitted;
- (5) an outdoor area of a workplace that is not in the area described by Section 10-6-2(D) (*Smoking Prohibited*) provided, however, that this exemption does not apply to a park;
- (6) a bingo facility operated under the Bingo Enabling Act, Chapter 2001 of the Occupations Code, if:
 - (a) an enclosed non-smoking area is provided;
 - (b) the smoking area is mechanically ventilated to prevent smoke from entering a non-smoking area; and

- (c) no one under the age of 18 is admitted to the smoking area;
 - (7) a facility operated by a fraternal organization for a charitable, benevolent, or educational function if the premises is controlled by the organization provided, however, that this exemption does not apply to a park, public recreation area, or recreation facility;
 - (8) a business premise that was issued a restricted permit by the city on or before November 2, 2004;
 - (9) those areas in parks that are specified in a permit issued by the Parks and Recreation Department authorizing smoking for filming purposes only and during filming by actors only;
 - (10) people playing golf on golf courses between the tee of the first hole and the end of the green for the final hole; and
 - (11) temporary designated smoking areas in a park for special events where the Director recommends approval of, and the City Council has approved, the temporary designated smoking area.
- (B) This chapter applies to all areas, persons, and activities described in Section 10-6-3 (A)(9)-(11) and no exemption from compliance with this chapter shall exist when an outdoor cooking and grilling prohibition for the location is in effect under Section 8-1-92 (Outdoor Cooking and Grilling Prohibition).
- (C) In making the recommendation in 10-6-3(11), the Director will consider the impact on the surrounding neighborhood and other park patrons, any problem related to smoking that granting the exemption might create, a clean-up agreement made by the person requesting the exemption, and citizen input determined relevant by the Director.

PART 3. City Code Chapter 10-6, Section 10-6-11, Subsection (A) is amended to read:

10-6-11: VIOLATION AND PENALTY.

- (A) A person who violates the provisions of this chapter commits a Class C misdemeanor, punishable under Section 1-1-99 (*Offenses; General Penalty*) by a fine upon conviction not to exceed \$500 unless proof of a culpable mental state is pled, in which case the fine upon conviction shall not exceed \$2,000. Proof of a culpable mental state is expressly waived and need not be proved when a fine of \$500 or less is sought for the offense~~[not to exceed-~~

~~\$2,000. A culpable mental state is not required for fines of \$500.00 or less, and need not be proved.]~~

PART 4. EFFECTIVE DATE.

The Council finds that the ongoing drought conditions and wildfire danger constitutes an emergency. Because of this emergency, this ordinance takes effect immediately upon its passage for the immediate preservation of the public peace, public health, and safety.

PASSED AND APPROVED

_____, 2012

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Lee Leffingwell
Mayor

APPROVED:

Karen M. Kennard
City Attorney

ATTEST:

Shirley A. Gentry
City Clerk